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No. 83-1280

In the
Supreme Court of the United States
OCTOBER TERM, 1983

JEANNE AIMONE,

Appellant,

v.

MORGAN M. FINLEY,

Appellee.

On Appeal From The Supreme Court Of Illinois

MOTION TO DISMISS OR AFFIRM

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The Appellee, Morgan M. Finley, Clerk of the Circuit Court of Cook County, Illinois (hereinafter referred to as "Court Clerk") moves the Court to dismiss the appeal herein, or in the alternative, to affirm the judgment of the Supreme Court of Illinois on the ground that it is manifest that the questions on which the decision of the case rests are so insubstantial as not to need further argument.

FACTS

The facts of this case are adequately discussed in the opinion of the Illinois Appellate Court, First District, 113 Ill. App. 3d 507, 447 N.E.2d 868 (1st Dist. 1983). A brief summarization is made here for the Court's convenience.

Appellant filed a petition for mandamus asking the trial court to order Morgan M. Finley, the Clerk of the Circuit Court of Cook County, Illinois, Appellee, to unseal and allow the appellant to examine her own adoption records. A motion to dismiss was filed by the Court Clerk asserting that mandamus was an inappropriate remedy in this case. The trial court agreed and granted the motion to dismiss. The trial court found that mandamus was not an appropriate remedy because petitioner had failed to demonstrate that she had a clear legal right to the unsealing of her adoption records. As an independent ground for affirmance, the appellate court upheld the trial court's finding that mandamus was not an appropriate remedy in this case. The appellate court also found that an adoptee's interest in the possible inheritance from her natural parents did not outweigh the policy considerations for keeping adoption files under seal and that such bar to her inspection of the files did not deprive her of property without due process of law.

On October 4, 1983, the Illinois Supreme Court denied appellant's petition for leave to appeal. The mandate issued to the Appellate Court on October 26, 1983.

ARGUMENT

I. THE APPEAL SHOULD BE DISMISSED BECAUSE THIS CASE PRESENTS NO SUBSTANTIAL QUESTION.

A. The Judgment Of The Illinois Appellate Court Rested On Adequate And Independent State Grounds.

This Court has consistently held to the proposition that it will not review judgments of state courts which rest on adequate and independent state grounds. *Hub* v. *Pitcairn,* 324 U.S. 117 (1945); Sup.Ct.R. 16(1)(b). In the instant case, the Illinois Appellate Court specifically set forth that it chose to affirm on an independent ground, *In Re Jeanne Aimone,* 113 Ill. App. 3d 507, 509, 447 N.E.2d 868, 870 (1st Dist. 1983). The Court stated that mandamus was not a proper remedy in that the clerk of the court did not have a clear legal duty to open the adoption files without a court order. The appellate court's decision was based on Illinois' special remedy law and not on federal grounds.

Where the state court rests its decision on both state and federal grounds, either of which would be dispositive, this Court would have no jurisdiction. *Zacchini* v. *Scripps-Howard Broadcasting Co.,* 433 U.S. 562, 568 (1977). In *Hub* v. *Pitcairn,* 324 U.S. 117, 126 (1945), this Court noted that where, as here, the same judgment would be rendered by the state court after review of the federal issues, the review by this Court could amount to nothing more than an advisory opinion. No Constitutional review would render the facts in this case amenable to a mandamus action.

B. The Challenged Statutory Scheme Does Not Concern Any Constitutional Right Of The Appellant.

Appellant tries to bootstrap her alleged right to adoption records on a right to inherit argument. The right to intestate inheritance is conferred by Illinois statute. Ill. Rev. Stat. 1981, ch, 110½, par. 2-1. Nowhere does the statute limit inheritors to natural children. Each heir may be limited by his individual circumstances, and no statutory scheme exists to automatically preclude adoptees from inheriting from either their natural parents or their adoptive parents. Ill. Rev. Stat. 1977, ch. 110½, par. 2-4.

The right to demand that property pass by inheritance or will to heirs or devisees is not an inherent or natural Constitutional right, but is a purely statutory right. Nothing in the Federal Constitution forbids the legislature of a state to limit, condition, or even abolish the power of the testamentary disposition over property within its jurisdiction. *Irving Trust Co.* v. *Day*, 314 U.S. 556, 562 (1942).

Nowhere is it required that a state must make information available, on demand, which may, or may not lead to an inheritance. While appellant may be entitled to inherit from her natural parents if they are deceased and if they have died intestate, she may still be precluded from free access to her adoption records. Due process rights do not operate in vacuums and cannot be applied speculatively or whimsically. *Webb's Fabulous Pharmacies, Inc.* v. *Beckwith*, 449 U.S. 155, 161 (1980).

II. IN THE ALTERNATIVE, THE DECISION OF THE ILLINOIS SUPREME COURT SHOULD BE AFFIRMED.

The unsealing of adoption records in order to ascertain the possible existence of an inheritance would violate a natural parent's Constitutional right to privacy and would frustrate the legitimate interest of the State in keeping those records sealed. Any right to inherit must be balanced against the right to privacy, and the right to privacy is certainly the weightier of the two claims. In the case at bar, the state's protection of the adoption process by control of its judicial records does not rise to the level of an unconstitutional infringement of petitioner's rights.

Although the Constitution does not explicitly mention any right of privacy, the Court has recognized that one aspect of the liberty protected by the Fourteenth Amendment is a right of personal privacy. *Carey* v. *Population Services*, 431 U.S. 678 (1977); *Roe* v. *Wade*, 410 U.S. 113 (1974). The decision of whether or not to bear a child is an example of the kind of concern constitutionally entitled to the right of privacy. *Carey* v. *Population Services, supra*; *Roe* v. *Wade, supra*; *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52 (1976). This privacy right extends to an individual's liberty to make choices as they regard contraception and child bearing. *Eisenstadt* v. *Baird*, 405 U.S. 438 (1972). Just as the courts protect the freedom of choice and privacy with respect to childbearing in terms of abortion, they must also protect the freedom of choice and privacy in terms of adoption. In an adoption, the natural parents sever all present and future rights and interests in the child. Ill. Rev. Stat. 1981, ch. 40, sec. 1521. *In Re Cech*,

8 Ill. App. 3d 642, 291 N.E.2d 21 (1st Dist. 1972); *In Re Petition of Jollay,* 22 Ill. App. 3d 151, 319 N.E.2d 287 (3rd Dist. 1974). The natural parents surrender their child for adoption with not merely an expectation of confidentiality, but with an actual statutory promise that their identity as the child's natural parents will be kept sealed. Ill. Rev. Stat. 1981, ch. 40, sec. 1522. "Thus, the natural parent has a right to privacy, a right to be let alone that is not only expressly assured (by statute) but also has been recognized as a vital interest by the United States Supreme Court. *Stanley* v. *Georgia,* 394 U.S. 557 (1969)." *The Alma Society Inc.* v. *Mellon,* 459 F. Supp. 912 (S.D. N.Y. 1978).

When comparing the fundamental right to privacy with a statutory right to inherit, it is obvious that the balance falls directly on the privacy side. "Rights of succession to the property of a deceased, whether by will or by intestacy, are of a statutory creation, and the dead hand rules succession only by sufferance. Nothing in the Federal Constitution forbids the legislature of a state to limit, condition, or even abolish the power of testamentary disposition over property within its jurisdiction." *Irving Trust Co.* v. *Day,* 314 U.S. 556, 562 (1942).

CONCLUSION

For the reasons stated herein, this appeal should be dismissed or the judgment affirmed.

Respectfully submitted,

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